

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, *ex rel.*  
Renee Ifrah,

Plaintiff,

vs.

**REPORT  
and  
RECOMMENDATION**

**05-CV-237A(F)**

COMMUNITY HEALTH CENTER OF BUFFALO, INC.,  
SANDRA DiPASQUALE,  
JAMES COOK,  
KATHLEEN DUKE,  
ARDELL DOLSON,  
MICHAEL IKPEZE,  
BARBARA MAJERONI,  
SUSAN SCHUTTE,  
PATRICIA SMITH,  
ALBERT RICHARDSON,  
JAMES COUSINS,

Defendants.

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APPEARANCES:

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### **JURISDICTION**

This matter was referred to the undersigned for all pretrial matters by Order of Hon. Richard J. Arcara on March 17, 2010 (Doc. No. 39). It is presently before the court on a Suggestion of Death Upon the Record, pursuant to Fed.R.Civ.P. 25(a)(1), filed March 7, 2011 (Doc. No. 57).

### **BACKGROUND, FACTS AND DISCUSSION**

This action, brought pursuant to the Federal False Claims Act, 31 U.S.C. § 3729, *et seq.*, was commenced on April 6, 2005. On March 7, 2011, Defendants filed a Suggestion Death of Defendant James C. Cook ("Mr. Cook") (Doc. No. 57) ("the Suggestion") pursuant to Fed.R.Civ.P. 25(a)(1) ("Rule 15(a)(1)"). Rule 25(a)(1) provides that where a suggestion of death of any party is filed, unless within 90 days thereafter a motion is made to substitute for the deceased party, in this case a defendant, such party's successor or representatives, the action against the deceased party shall be dismissed, Rule 25(a)(1), but the action does not abate. Fed.R.Civ.P.

25(a)(2).

In this case, as more than 90 days has elapsed since the Suggestion was filed, and no motion for substitution of Mr. Cook's successor or representative has been filed by any party, the action against Mr. Cook should, in accordance with Rule 25(a)(1), be DISMISSED.

### **CONCLUSION**

The action against Defendant James C. Cook should be DISMISSED and the Clerk of Court directed to delete this Defendant from the caption of the action.

Respectfully submitted,

*/s/ Leslie G. Foschio*

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LESLIE G. FOSCHIO  
UNITED STATES MAGISTRATE JUDGE

Dated: June 17, 2011  
Buffalo, New York

Pursuant to 28 U.S.C. §636(b)(1), it is hereby

**ORDERED** that this Report and Recommendation be filed with the Clerk of the Court.

**ANY OBJECTIONS** to this Report and Recommendation must be filed with the Clerk of the Court within fourteen (14) days of service of this Report and Recommendation in accordance with the above statute, Rules 72(b), 6(a) and 6(e) of the Federal Rules of Civil Procedure and Local Rule 72.3.

**Failure to file objections within the specified time or to request an extension of such time waives the right to appeal the District Court's Order.**

Thomas v. Arn, 474 U.S. 140 (1985); Small v. Secretary of Health and Human Services, 892 F.2d 15 (2d Cir. 1989); Wesolek v. Canadair Limited, 838 F.2d 55 (2d Cir. 1988).

Let the Clerk send a copy of this Report and Recommendation to the attorneys for the Plaintiff and the Defendants.

SO ORDERED.

*/s/ Leslie G. Foschio*

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LESLIE G. FOSCHIO  
UNITED STATES MAGISTRATE JUDGE

DATED: June 17, 2011  
Buffalo, New York